IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION No. 4516 of 2002**

Between:

The Commissioner, Uppal Kalan Municipality,
Uppal , R.R.District.

**..... PETITIONER**

AND

A.Rajaiah and 3 others

**.....RESPONDENTS**

**ORDER:**

Challenging the order of the 4th respondent passed in W.C.No.2/2001, dated 19.01.2002, the present writ petition is filed.

The brief facts that are necessary for disposal of the present writ petition may delineated as follows:

The petitioner municipality on 26.05.1998 called for tenders for twin type lighting system and erection of poles on the main road dividers at Habahiguda and the said work was entrusted to the 2nd respondent on 05.09.1998. The petitioner is not concerned with any payment of wages to the labour nor does it maintain any register for the said labour. The petitioner Municipality does not have any master and servant relationship with the labour engaged by the 2nd respondent-contractor. The claim of the 1st respondent for payment of compensation for any accident occurred during the erection of the poles cannot be entertained against this petitioner. The petitioner Municipality is not at all responsible for the alleged accident occurred during the subsistence of contract with the 2nd respondent. The contractor is responsible for payment of compensation to his labour, in case of accident, as provided under the Workmen's Compensation Act. The 4th respondent without appreciation of the facts, terms and conditions of the contract, has erroneously passed the impugned order, fixing the responsibility on the petitioner for payment of compensation.

Heard the learned counsel on either side.

The learned counsel for the petitioner contended that the 1st respondent-workman is not directly engaged by the writ petitioner and that there is no relationship of employer and employee between the petitioner and the 1st respondent, since for a particular purpose, the 1st respondent was appointed by the sub-contractor. He further contended that as per the agreement dated 05.09.1998 the contractor alone is responsible for payment of compensation, if any, and hence he prays to allow the writ petition.

On the other hand, the learned counsel for the 1st respondent-workman contended that the writ petition itself is not maintainable under law, in view of the alternative statutory remedy is available under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the Act'). He further contended that under Section 12 (1) of the Act, the principal employer has to pay compensation, and hence on both these grounds, the writ petition is devoid of merit and is liable to be dismissed.

The factual matrix is not in dispute. The 1st respondent sustained injury while working under the 2nd respondent. The 1st respondent sustained permanent disability. The amount arrived at by the

4th respondent is also not in dispute. The only contention raised by the learned counsel appearing for the petitioner is that there is no relationship of employer and employee between the petitioner and the 1st respondent, and therefore, by virtue of Ex.R2 dated 05.09.1998, it is only for the contractor to pay compensation, but not the petitioner-municipality.

There cannot be any dispute that the scope of judicial review is very much circumscribed. Unless the findings are perverse or the findings are not based upon the evidence, normally this Court will not interfere with the orders of the Tribunal or the Commissioner for Workmen's Compensation. The finding of the 4th respondent is that Under Section 7 and 12 of the Contract Labour (R&A) Act, it is mandatory for the principal employer to be registered and also for the contractor to obtain license. The workman can be employed as contract labour only through licensed contractors. If the said two conditions were not satisfied, the workman employed by the intermediary would be deemed to have been employed by the principal employer.

Section 12(1) of the Workmen's Compensation Act, 1923 reads thus:

> "**Contracting:** Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately

employed."

On a perusal of the above said provision makes it very clear that the principal employer is liable to pay compensation to the workman employed in the execution of work, if any, and Sub-section (2) also gives a remedy to the principal employer, where under he can recover the same from the contractor, if any compensation paid by him in pursuance of sub-section (1).

It is also one of the contentions raised by the learned counsel for the 1st respondent-workman that under Section 30 of the Act, an appeal lies to the High Court from the orders of the 4th respondent. Since it is a statutory appeal, the petitioner has to avail the same, because it is not the case of violation of principles of natural justice or violation of fundamental rights of the petitioner.

Therefore, the Writ Petition is dismissed, leaving open all the remedies made available to the petitioner under law. No order as to costs.

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**K.C. BHANU,J**

Dated: 16.08.2005

Dsr

**Note:**

**Issue CC in three days**

**B/o**

**Dsr**